



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Ecological Services

6950 Americana Parkway, Suite H
Reynoldsburg, Ohio 43068-4127

COMM: 614/469-6923 FAX: 614/469-6919
August 21, 2000



Phil Frapwell
U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, New York 14207-3199

Dear Mr. Frapwell:

This letter summarizes our comments stemming from the July 26, 2000 meeting about the dredge and fill project by Barnes Nursery, Inc. adjacent to Sheldon Marsh in Erie County, Ohio. The meeting took place among the Corps, Ohio Department of Natural Resources, Ohio Environmental Protection Agency, and U.S. Fish and Wildlife Service. The Barnes Project was originally authorized by the Corps on June 20, 2000 (PCN 2000-01800) under Nationwide Permit #27 (restoration activities).

We echo the concerns of the Ohio Department of Natural Resources and Ohio Environmental Protection Agency regarding wetlands and critical habitat for the Federally endangered piping plover (*Charadrius melodus*). The Ohio Department of Natural Resources documented its concerns in its August 3, 2000 letter to you. The Ohio Environmental Protection Agency documented its concerns in its August 1, 2000 letter to you. We ask that the Corps follow through on your July 26, 2000 promise to implement with Mr. Barnes the three actions documented at the end of Ohio Environmental Protection Agency's August 1, 2000 letter.

We also believe Sheldon Marsh is a Class 3 wetland for which a nationwide permit should not have been issued. After reviewing the dredge and fill site with personnel from the Ohio Department of Natural Resources and Ohio Environmental Protection Agency, we ask that the dredged material be returned its original location with best management practices implemented to minimize degradation of water quality and wildlife habitat. We also recommend that restoration measures be taken to return the dredge site to its former natural condition.

We informed you at the July 26 meeting that Sheldon Marsh is currently proposed as critical habitat for the Federally endangered piping plover. The Barnes dredge project occurred along the boundary of Sheldon Marsh that may have foraging value for piping plovers and other shorebirds. Under the Endangered Species Act of 1973, as amended, the Corps must conference with the U.S. Fish and Wildlife Service when proposed critical habitat will be adversely affected by an action subject to Corps approval. Prior to the July 26 meeting,

no such consultation occurred. During the July 26, 2000 meeting, we advised the Corps to not allow Mr. Barnes to expend any more effort on the dredge project until after the Corps has conferenced with the U.S. Fish and Wildlife Service about the piping plover and has required an individual permit for the project.

Please feel free to contact Endangered Species Biologists Buddy Fazio (ext. 13) or Angela Boyer (ext. 22) with any questions you may have.

Sincerely,



Kenneth C. Lammers
Acting Supervisor

Kenneth - Lammers@FWS.gov

cc: Stu Lewis, Chief, ODNR Div. Natural Areas and Preserves, Columbus, OH
Wayne Warren, Chief, ODNR Div. Real Estate and Land Mgt., Columbus, OH
Lisa Morris, Chief, OEPA Div. Surface Water, Columbus, OH



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

12 OCT 2000

00 OCT 16 PM 2:24

REPLY TO THE ATTENTION OF

WW-16.J

Paul Leuchner, Chief
Regulatory Branch
U.S. Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, NY 14207-3199

Re: Nationwide Permit 27 application CELRB-CO-R-2000-02170 (0) Barnes Nursery

Dear Mr. Leuchner:

The U. S. Environmental Protection Agency has reviewed the application materials and consultant's Compliance and Management Plan for the project referenced above. The proposed project involves dredging and filling waters of Lake Erie to construct an irrigation system for a commercial nursery operation. Work has commenced at the site, in Sandusky Bay, Erie County Ohio under an existing Nationwide Permit 27.

Nationwide Permit 27 is not intended to allow the modification of waterways for irrigation purposes. The wildlife enhancement features of this project are an apparent afterthought. The consultant's report does a very good job of indicating the extent of the departure from NWP 27 condition limitations. However, the issue is not whether the project can be brought into compliance with NWP 27 but rather whether NWP 27 is appropriate for the work already in place.

We are not convinced that the applicant has met the test of appropriateness for a NWP 27 in the description of the proposed work. The applicant's consultant's report is hampered by a failure to involve affected stakeholders in report design. As a result, the product comes off as an attempt to describe the best features of a project that probably would not have been seen as necessary to begin with. Maps of the area show an aquaduct line to the east of the Barnes property. Could water be obtained from this source or another aquaduct along the same alignment? Avoidance, including a no project alternative, to the proposed action have not been reviewed as required by the 404(b)(1) guidelines.

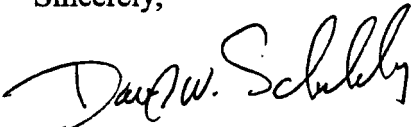
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From looking at air photos of the area the existing siltation problems are being confined behind the existing berm in a manner that will probably lead to degraded water quality and the creation of fast land from waters of the United States. The consultant's report is silent on this subject except to point out that a deeper channel between the islands would allow winter weather access by fish. Is this really a project goal? Dr. Herdendorf hastens to point out that even this benefit would require a continuing maintenance effort.

While the consultant can question the accuracy of the Ohio Environmental Protection Agency's determination that the wetlands involved are indeed Category 3 wetlands, OEPA is responsible for making the determination and will in all likelihood act accordingly on the denial of a water quality certification for the project. These facts require full disclosure to all interested parties. It is, therefore, our recommendation that this project be put out on Public Notice as an individual permit application.

Thank you for the opportunity to provide comments on the Barnes proposal for project compliance and management. If you have any questions, or if we can be of further assistance, please contact Wayne Gorski at 312-886-0140.

Sincerely,


Kevin M. Pierard, Chief
Watersheds and Non-Point Source Branch

cc: Ric Queen, OEPA
Kim Baker, ODNR



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
6950 Americana Parkway, Suite H
Reynoldsburg, Ohio 43068-4127
(614) 469-6923/FAX (614) 469-6919
June 11, 2001



01 JUN 14 AM 11:41

Lt. Colonel Glen R. DeWillie
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207

Attention: Regulatory Branch, Mr. Michael Montone

Dear Colonel DeWillie:

The U. S. Fish and Wildlife Service has completed reviewing Public Notice No. 2000-02170(1), dated May 11, 2001. The applicant, Mr. Robert W. Barnes, president of Barnes Nursery, Inc., proposes to dredge and discharge approximately 14,100 cubic yards of material affecting approximately two acres of mudflats, in association with a project constructed in waters of the United States. Mr. Barnes is requesting this authorization after-the-fact in order to maintain the project he constructed during July 2000, and also is proposing new modifications. The project is located within Sheldon Marsh, at 3511 Cleveland Road West, Huron, Erie County, Ohio.

The purpose of the proposed project is to restore the former hydrologic circulation to a portion of the East Sandusky Bay, and provide irrigation water for operation of Mr. Barnes' nursery; establish new avifauna habitat on a series of islands; provide deep water fish and aquatic vegetation habitat; and promote the conversion of approximately five acres of barren mudflats to coastal wetlands.

The original project created a channel approximately 1,500 feet long, 55 feet wide, and 5 feet deep using dredging techniques. The dredged material was used to create an earthen berm 1,500 feet long, 55 feet wide and approximately six feet high, that runs parallel with the channel. On April 18, 2001, 200 feet of the far western portion of the project was restored to former topography where wetland encroachment occurred. The applicant has requested authorization to maintain the constructed portion of this project with the following modifications: grade the berm to a relatively uniform elevation of six feet; divide the berm into five separate islands by cutting circulation channels every 300 feet; grade the banks of these islands to a 4:1 slope to foster wetland plant zonation; excavate a narrow feeder channel 500 feet long and 1.5 feet deep from the end of the existing channel to the area of water influx from Lake Erie.

This project is located within Sheldon Marsh, one of Lake Erie's last remaining intact coastal wetland systems. The majority of the Marsh is protected as a State Nature Preserve, but the outskirts of the area are private property. There is, however, no physical boundary between the State and private land. Although the current channel is located on private property, it is now resulting in, and will continue to result in direct impacts to State land. Sheldon Marsh is a large, contiguous, high quality, wetland system that has been designated a Category 3 wetland by the Ohio EPA. The construction of this project will very likely contribute to the degradation of this system. The Service would like to clarify the purpose of this project. We refute the notion that this project is a wetland restoration project, and assert that the main focus of the project is to provide water to Barnes Nursery. The project may have been designed with ecological benefits in mind; however, the actual purpose is to provide a water source. Prior to

construction of the channel and berm, the marsh provided extremely valuable habitat to a huge variety of birds, fish, and other wildlife. From the Service's standpoint, there is no need to "restore" this area, as it had very few signs of human disturbance, and little adverse human activity normally occurs here.

The Service has been involved with this project from the beginning, and continues to have a strong interest in the outcome of this project. Staff from our office attended an interagency site visit at Barnes Nursery on May 22, 2001 to view the completed portion of the project, and to discuss the Public Notice. A portion of the proposed modifications to the project would cross through the State Nature Preserve. As was discussed at the May 22 meeting, this action would require approval of the Governor of Ohio, because actions such as this are not permitted within designated State Nature Preserves.

The completed portion of the project is located adjacent to an area designated by the Service as Critical Habitat for the piping plover, a Federal and State endangered species. The plover nests on shoreline and island sandy beaches with sparse vegetation and the presence of small stones or cobble. Areas within Sheldon Marsh that contain these elements are protected by the Critical Habitat designation, which forbids any action by a Federal agency that will adversely modify the designated area. This portion of Sheldon Marsh, however, does not contain the constituent elements of Critical Habitat, therefore it is not protected under the Critical Habitat designation. It does, however, provide excellent foraging habitat for the plover and a myriad of other birds and waterfowl, including the bald eagle, a Federal threatened and State endangered species. Although extremely rare, plovers were seen utilizing Sheldon Marsh in September of 1999, and bald eagles are regularly seen there. This area is one of the most commonly visited sites in Ohio to observe migrating birds, shore birds, and rare species. The "barren mudflat" habitat that currently exists on the site provides a wealth of insects and invertebrates, and when inundated, provides fish and other aquatic food sources for these birds. During certain times of year, this area may be used for fish spawning and as a fish nursery area. Overall, this area is rich in diversity, and is an invaluable habitat resource for the fish and wildlife in the area, including the piping plover and bald eagle. Eagles are notoriously shy and generally avoid areas that are disturbed by humans. Any modification of this habitat could negatively affect the piping plover, bald eagle, and other birds, and could reduce the value of the habitat for these species. It is questionable if disturbing this system by creating and maintaining the channel and islands will actually improve the existing habitat.

The Final Determination of Critical Habitat for the Great Lakes Breeding Population of the Piping Plover, 50 CFR Part 17, under the headline, "Effects of Critical Habitat Designation, Section 7 Consultation" states, "Federal agencies already consult with us on activities that may affect the species [piping plover] to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to...(2) harbor dredging and dredge spoil placement and disposal; (3) fill of interdunal wetlands..." Since the proposed project includes item (2), and may include item (3), there is a very real potential that this project will negatively impact the piping plover and its habitat. Although this project will not affect the portion of Sheldon Marsh that is designated Critical Habitat, we strongly believe that it will negatively affect foraging habitat that is adjacent to the designated area. We ask the Corps of Engineers to carefully consider the location of this project in relation to the Critical Habitat area when making a final determination on this project.

At the site visit we observed areas where the channel was causing erosion along the wetland area, and the existing berm was eroding into the marsh. Although future revegetation of this area may reduce erosion, sedimentation of the water in the marsh will always be a threat, if the channel and berm remain. This was not the case when the area was a mudflat. In addition, the potential for the continuous need of dredging increases the likelihood that the water will become laden with sediment. Most fish species will not utilize waters with high suspended solids, which could reduce the value of this area for spawning, thus leading to fewer fish eggs and fry, two valuable food sources for birds. Many macro- and micro-invertebrates also prefer areas with low sediment loads. These animals also provide an important food source for birds. In

addition, one of the only species of fish that would utilize silty waters is carp, an aggressive species that prevents future colonization by other fish species and disrupts the growth of aquatic vegetation that may provide forage for birds and wildlife.

At the site visit, we examined the recently restored area of wetland encroachment. The two species that were aggressively recolonizing the area were purple loosestrife and *Phragmites* sp., both invasive species. It is our belief that these species are likely to dominate the proposed islands as well. Without careful management of the area and continuous efforts to control invasive vegetation, these islands will easily become infested with these species, which out-compete native plant species and provide little benefit to native wildlife. If this area were to be regularly managed to control invasives, this could likely involve the use of herbicides and heavy machinery, which further alters the natural state of the marsh and disturbs the ecosystem. The proposed islands will provide artificial nesting and foraging habitat for opportunistic species such as Canada geese and gulls. The increased presence of these species will likely decrease the value of the marsh for endemic bird species. Grazing and nesting activities of Canada geese and gulls can easily reduce the available native marsh vegetation, which would result in altering and/or reducing foraging and breeding habitat for endemic species.

Furthermore, we question the value of the "deep water habitat" provided by the excavated channel. Channels such as this one did not exist within the marsh prior to construction, and their presence now may introduce non-marsh species into the marsh. The channel will provide a potential passageway for invasive species to move into areas that they do not currently occupy. This channel will require regular maintenance to keep it from filling with sediment. Regular maintenance will continually disturb the ecosystem, and will likely reduce the quality of the habitat for birds and other wildlife. The large size of the existing channel could potentially encourage trespassing boaters, especially during times of high water, further disturbing the area.

Finally, the Service is very concerned that the presence of the islands and channel will alter the hydrology of the marsh. Where water would normally be distributed to other areas of the marsh, with the proposed project, it will be funneled into the channel at a rate of approximately 350,000 gallons per day (personal communication with Sharon Barnes). This is a significant amount of water that is being diverted from the rest of the marsh. Diversion of this water could ultimately affect the formation and maintenance of wetland areas within the marsh. The berm that is present now obviously affects the flow of water, as it almost completely segregates a large area of mudflats and wetlands from the rest of the marsh. This area has little water flow and will likely develop into a different type of habitat, if it remains this way.

After discussing this project with other agency officials and Service biologists, we believe that other alternatives exist that could provide Barnes Nursery with water and avoid all impacts to Sheldon Marsh. We believe that these alternatives have not been fully examined, and that this project could be designed such that Sheldon Marsh could remain the pristine ecosystem that it has been for decades.

Because of the value of this area to fish and wildlife resources, its value as one of Lake Erie's last remaining coastal wetland areas, its value to the endangered piping plover and the threatened bald eagle, and its relatively undisturbed nature, the Service recommends that the permit, as proposed, be denied.

ENDANGERED SPECIES COMMENTS: The proposed project lies within the range of the bald eagle and piping plover, Federally listed threatened and endangered species, respectively. Both species use this area for foraging. The project, as proposed, is likely to adversely modify this area, decreasing its potential value to these and other species.

(E) candidate (+) (+)
The proposed project lies within the range of the Indiana bat, eastern massasauga, Lake Erie water snake, and lakeside daisy, Federally-listed endangered and threatened species. Due to the project type and (+)

location, the project, as proposed, will have no effect on these species. Relative to these species, this precludes the need for further action on this project as required by the 1973 Endangered Species Act, as amended. Should the project be modified or new information become available that indicates listed or proposed species may be affected, consultation should be initiated.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

We appreciate this opportunity to provide the above comments. If you have questions, or if we may be of further assistance in this matter, please contact Megan Sullivan at extension 16 in this office.

Sincerely,



Kenneth C. Lammers
Acting Supervisor

cc: DOW, Wildlife Environmental Section, Columbus, OH
ODNR, Division of Real Estate & Land Management, Columbus, OH
Ohio EPA, Water Quality Monitoring, Attn: Rick Queen, Columbus, OH
US EPA, Office of Environmental Review, Chicago, IL